

BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and First  
Amended Petition to Revoke Probation  
Against:

JAMES RAYMOND LAGUTARIS, RCP  
30235 Corte Plata  
Temecula, CA 92691

Respiratory Care Practitioner  
License No. 16811,

Respondent.

OAH NO. L2006020180

CASE NO. R-1996

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California, on August 8, 2006.

Deputy Attorney General Chris Leong represented complainant.

James R. Lagutaris (respondent) represented himself.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation and First Amended Petition to Revoke Probation was filed by Stephanie Nunez (complainant), in her official capacity as the Executive Officer, Respiratory Care Board (the board), State of California.

2. On January 11, 1994, the board issued Respiratory Care Practitioner License number 16811 to respondent. Respondent's license was in full force and effect at all times relevant to the instant proceedings, however, it expired on October 31, 2005.

3. In a disciplinary action entitled “In the Matter of the Accusation Against James Raymond Lagutaris,” Case number R-1861, the board issued a decision, effective May 10, 2004, revoking respondent’s license. Pursuant to the disciplinary order, the revocation was stayed and respondent was placed on three years probation under certain terms and conditions. The following terms and conditions of respondent’s 2004 probation are relevant to the instant action:

Condition 2: “Respondent, at his expense, shall participate in random testing, including but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the board.”

“Failure to submit to testing or appear as requested shall result in the filing of an accusation and/or petition to revoke probation;”

Condition 3: “Respondent shall completely abstain from the possession or use of alcohol and all other mood altering drugs.”

“Any positive test result that registers over the established laboratory cutoff level shall constitute a violation of probation;”

Condition 5: “Respondent shall obey all laws and all regulations governing the practice of respiratory care in California and respondent shall notify the board, in writing, within 14 days of any incident resulting in his arrest, criminal charges filed against him, or citations issued to him;”

Condition 6: “Respondent shall file quarterly reports of compliance with the board;”

Condition 7: “Respondent shall comply with requirements of the board appointed probation monitoring program, and shall, upon reasonable request, report or appear to a local venue as directed;”

Condition 8: “All costs incurred for probation monitoring during the entire probation shall be paid by respondent.”

“If respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs.”

“Respondent understands that failure to submit costs timely is a violation of probation. . . ;”

Condition 12: “Respondent shall pay to the board a sum not to exceed the costs of the investigation and prosecution of this case.”

“If respondent is unable to submit costs timely, he is then required to submit an explanation of why he is unable to submit the costs, or a portion thereof.”

4. Respondent violated probation Condition 2 because he failed to appear and submit fluid samples for testing, as requested on the following dates: September 15, 2004; January 7, 2005; January 11, 2005; February 9, 2005; February 15, 2005; March 15, 2005; June 10, 2005; September 9, 2005; November 17, 2005; December 27, 2005; January 5, 2006; February 17, 2006; and March 30, 2006.

5. Respondent violated probation Condition 3, as follows:

A. On June 17, 2004, respondent tested positive for ethylglucuronide (ETG) at a level above the established laboratory cutoff level. The presence of ETG at a level above the established laboratory cutoff level indicates that the person tested has consumed alcohol in the recent past. In fact, when questioned about the positive test, respondent admitted that he had consumed beer the weekend prior to the June 17, 2004 test;

B. On August 2, 2004, respondent tested positive for ETG at a level above the established laboratory cutoff level;

C. On September 24, 2004, respondent tested positive for ETG at a level above the established laboratory cutoff level; and,

D. In respondent's Quarterly Report of Compliance, dated January 25, 2005, respondent admitted drinking alcohol during the quarterly period. Specifically, respondent drank alcohol on September 16, 2004 and December 1, 2004.

6. Respondent violated probation Condition 5, as follows:

A. Although the specific nature of respondent's probation violation was not established, on April 15, 2005, respondent admitted that he violated probation in criminal case number NB01HF1142.

B. On May 8, 2005, respondent was arrested for violating California Penal Code sections 647(f) (Public Intoxication) and 148, subdivision (a)(1) (Obstructing a Peace Officer), misdemeanor crimes;

C. On December 30, 2005, respondent was convicted of violating California Vehicle Code sections 23152, subdivision (a) and 14601, subdivision (a). Those misdemeanor convictions are described in Findings 11, 12, and 13, below;

D. On February 23, 2006, respondent was convicted of violating California Vehicle Code sections 23152, subdivisions (a) and (b). Those misdemeanor convictions are described in Findings 14, 15, and 16, below;

E. Respondent failed to notify the board within 14 days of the incidents resulting in the arrest and convictions described in A through D of this paragraph.

7. Respondent violated probation condition number 6 by failing to file Quarterly Reports of Compliance for the following quarterly periods: January 1, 2005 through March 31, 2005; April 1, 2005 through June 30, 2005; July 1, 2005 through September 30, 2005; October 1, 2005 through December 30, 2005; and January 1, 2006 through March 31, 2006.

8. Respondent violated probation condition number 7, as follows: As part of respondent's random drug testing program, respondent was required to telephone Compass Vision, Inc. (CVI), the drug testing facility, on a daily basis to see if he needed to report for testing. Respondent failed to telephone CVI, as required, on the following dates: June 15, July 4, 5, 9, 24, 31, August 1, 7, 14, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, September 1, 4, 9, 13, 16, 17, 18, 19, 21, 26, 28, 29, October 5, November 26, 28, and December 2, 3, 5, 8, 10, 12, 13, 17, 18, 22, 24, 25, 26, 28, 29, 30, 2004, and January 1, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, February 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, March 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, April 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, May 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, September 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, every day in October, every day in November, every day in December, 2005, and from every day from January 1, 2006 to the present.

9. Respondent violated probation condition number 8 because he is delinquent in his probation monitoring costs in the amount of \$2,100 and he failed to submit any explanation indicating an inability to pay.

10. Respondent violated probation condition number 12 because he failed to make any of his cost recovery payments and he failed to submit any explanation indicating an inability to pay.

11. On December 30, 2005, in Orange County Superior Court, West Justice Center, Case number 05WM11157, respondent was convicted, after entry of his guilty plea, of one count of violating California Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol) and one count of violating California

Vehicle Code section 14601, subdivision (a) (Driving With a Suspended License With a Prior Offense Within Five Years), misdemeanor crimes. Respondent also admitted the allegation that he had suffered two prior convictions for driving under the influence of alcohol. Consequently, respondent's Driving Under the Influence Conviction represents the conviction of a crime substantially related to the qualifications, functions and duties of a respiratory care practitioner and constitutes a violation of respondent's probation conditions numbers 3 and 5.

12. The facts and circumstances underlying respondent's December 30, 2005 convictions are as follows: On November 14, 2005, at approximately 8:10 p.m., a Huntington Beach police officer observed respondent driving a vehicle without a functioning rear license plate light. The officer stopped respondent and, upon approaching respondent's vehicle, the officer detected the strong odor of alcohol on respondent's breath. The officer administered field sobriety tests to respondent. Respondent failed the tests and was arrested for driving under the influence of alcohol (DUI).

13. As a result of respondent's arrest and convictions coupled with the fact that respondent admitted having suffered two prior DUI convictions, as noted in Finding 11, above, respondent was ordered to serve 240 days in county jail.

14. On February 23, 2006, in San Diego County Superior Court, North County Division, Case number CN197108, respondent was convicted, after entry of his guilty plea, of one count of violating California Vehicle Code section 23152, subdivision (a) (DUI) and one count of violating California Vehicle Code section 23152, subdivision (b) (Driving With .08% or Higher Blood Alcohol Level), misdemeanor crimes, which, based on respondent's prior DUI convictions, represent convictions of crimes substantially related to the qualifications, functions and duties of a respiratory care practitioner and represent violations of respondent's probation conditions 3 and 5.

15. The facts and circumstances underlying respondent's February 23, 2006 DUI convictions are as follows: On June 27, 2005, at approximately 3:55 a.m., a California Highway Patrol Officer noticed respondent's vehicle stopped on the right shoulder of the freeway. Respondent did not have his vehicle's hazard lights on so the officer stopped to check on the situation. Upon approaching respondent's vehicle, the officer noticed that respondent was lying in the back seat. The officer woke respondent and as the two were engaged in conversation the officer smelled the strong odor of alcohol on respondent's breath. Respondent admitted to having consumed alcohol so the officer had respondent attempt some field sobriety tests. Respondent failed the tests and was arrested for DUI.

16. Based on respondent's extensive history of driving under the influence, the court sentenced respondent to 365 days in county jail. At the time of the instant hearing, respondent was in the process of completing that sentence.

17. Respondent testified that he has an alcohol problem and that his is intent on dealing with it. Upon release from jail respondent will be participating in alcohol treatment programs. Respondent asserts that he is an exceptional respiratory care practitioner and that he has never allowed his alcohol problems to spill over into his professional life.

18. The reasonable costs of the investigation and prosecution of the instant case against respondent totals \$15,080.75.

### LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's license pursuant to Business and Professions Code sections 490, 3750, subdivision (d) and 3752, and California Code of Regulations, title 15, section 1399.370, subdivision (c) because, as set forth in Findings 11, 12, and 13, respondent was convicted of a crime substantially related to the qualifications, functions and duties of a respiratory care practitioner.

2. Cause exists for discipline of respondent's license pursuant to Business and Professions Code sections 490, 3750, subdivision (d) and 3752, and California Code of Regulations, title 15, section 1399.370, subdivision (c) because, as set forth in Findings 14, 15, and 16, respondent was convicted of crimes substantially related to the qualifications, functions and duties of a respiratory care practitioner.

3. Separate causes exist for revocation of respondent's probation based on each of respondent's violations of the terms and condition of probation, as described in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17. Respondent's probation violations are numerous and egregious. The alcohol abstention condition of respondent's probation was directly related to the key cause of discipline. Respondent engaged in repeated acts of DUI, which endangered the people of the State of California. Respondent's admitted failure to abstain from alcohol indicates that respondent is not fit to continue working as a respiratory care practitioner. The alcohol abstention condition of respondent's probation is reasonably and directly related to the reason for discipline in the first instance and, respondent's abstention is a small price for him to pay to ensure that he can practice safely as a respiratory care practitioner. Granting of probation is an act of grace. Respondent agreed to abide by the terms and conditions of his probation, including abstention from consumption of alcohol. Respondent violated that agreement on numerous occasions from the time he was placed on probation to the present. Unfortunately, by doing so, he has proven to be an unsuitable candidate for a further grant of probation.

4. The reasonable costs of the investigation and prosecution of the instant case against respondent, recoverable by the board pursuant to Business and Professions Code sections 3753.5, subdivision (a) and 3753.7, totals \$15,080.75.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The grant of probation ordered in Case number R-1861 is revoked; and, Respiratory Care Practitioner License number 16811, issued to respondent James Raymond Lagutares, and all rights appurtenant thereto, are revoked.

2. Respondent shall pay the board \$15,080.75, as cost recovery pursuant to Business and Professions Code sections 3753.5, subdivision (a) and 3753.7.

Dated: August \_\_\_\_\_, 2006.

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings